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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DENNIS JUNEAU, Plaintiff and Appellant, v. COUNTY OF SAN DIEGO, DEPARTMENT OF ANIMAL SERVICES , Defendant and Respondent.	D052239 (Super. Ct. No. 37-2007-00064223-CU-WM-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Luis R. Vargas, Judge. Affirmed.

Dennis Juneau appeals, in propria persona, a judgment denying his petition for writ of administrative mandate (petition) brought against the County of San Diego Department of Animal Services (the Department), in which he challenged the Department's decision, under Code of Civil Procedure[1] section 1094.5, finding his dogs, Cody, Wally and Rudy (collectively the dogs), were a public nuisance and should be abated. Juneau claims the trial court abused its discretion by (1) allowing him to

1 All further statutory references are to the Code of Civil Procedure.

represent others even though he is not an attorney; (2) denying his request for a continuance; and (3) deciding the writ petition without taking any evidence. Juneau also argues at length that the administrative process is "flawed" and unconstitutional. We affirm.[2]

FACTUAL AND PROCEDURAL BACKGROUND

The only record of the proceedings below provided by Juneau is the reporter's transcript of the hearing on his petition, the minute order denying his petition, and the resulting judgment. Accordingly, we limit our discussion of the facts underlying this appeal to what transpired at the hearing, and the court's order denying the petition.

In his petition, Juneau sought to overturn the Department's determination the dogs were a public nuisance. At the hearing on his petition, Juneau informed the court he was appearing on his own behalf, as well as on behalf of Laurie Lachman, who he alleges was a co-owner of the dogs, and his attorney, Ron Rockwell. The court informed Juneau that he could only appear on his own behalf because he was not an attorney.

Juneau then informed the court his counsel would not be present, stating, "I guess one of his relatives is sick and that's why he couldn't be here." The court inquired whether Juneau's counsel had told him he would be calling the court, to which Juneau

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2 This is Juneau's second appeal involving his animals. In the first appeal he challenged the trial court's decision denying a petition for writ mandate challenging the Department's decision that his dog Marty was a dangerous animal and should be abated. In an unpublished decision filed May 30, 2008, we affirmed the trial court's decision in that matter. (*Juneau v. County of San Diego, Department of Animal Services* (May 30, 2008, D050452) [nonpub. opn].)

responded, "No." The court also confirmed that Juneau's counsel had not contacted the Department's counsel.

Juneau requested a continuance of the matter. The Department objected, based upon the fact Juneau had not submitted any documents in support of the petition and because the matter had been continued twice before. The court denied the request for a continuance and allowed Juneau to argue his case. Juneau argued that the Department erred by both deciding the dogs should die and imposing restrictions on his keeping the dogs. Counsel for the Department argued that its decision to declare the dogs a public nuisance and have them abated was supported by substantial evidence.

The court denied the petition. In doing so, the court noted that it had the written administrative record before it. Based upon that record, the court found there was "substantial evidence to support [the Department's] finding of public nuisance and there was no abuse of discretion. The administrative record supports the finding the dogs were at large on numerous occasions between December 2005 and November 2006. [Citations.] In addition there is substantial evidence to support the finding the dogs 'attacked' a person on numerous occasions. [Citations.] Therefore, the writ of mandate is denied."

DISCUSSION

I. *JUNEAU WAS NOT ALLOWED TO REPRESENT OTHERS*

Juneau first asserts the court erred by allowing him to "represent others while not a member of the California bar." He claims he was allowed to represent Lachman, the alleged co-owner of the dogs, and his own counsel, Rockwell.

However, as detailed, *ante*, when Juneau announced he was appearing on behalf of himself, Lachman and Rockwell, the court made it clear that he could *only* represent himself. Thus, the court did not allow him to represent others at the hearing on his petition.

II. *JUNEAU'S REQUEST FOR A CONTINUANCE*

Juneau next contends the court committed reversible error by refusing to grant his request for a continuance. This contention is unavailing.

A. *Standard of Review*

We review a court's decision refusing a continuance under the deferential abuse of discretion standard. (*Foster v. Civil Service Com.* (1983) 142 Cal.App.3d 444, 448.) Under this standard of review, the discretion is that of the trial court, and the reviewing court will "only interfere with its ruling if it finds that under all the evidence, viewed most favorably in support of the trial court's action, no judge reasonably could have reached the challenged result." (*Estate of Billings* (1991) 228 Cal.App.3d 426, 430.) The trial court abuses its discretion when it has "'exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.' [Citation.]" (*Mendoza v. Club Car, Inc.* (2000) 81 Cal.App.4th 287, 301.) "The burden rests on the complaining party to demonstrate from the record that such an abuse has occurred." (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 985.)

B. *Analysis*

"""[T]here is no right to a continuance as a matter of law."""" (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170.)

Additionally, "[t]here is no policy in this state of indulgence or liberality in favor of parties seeking continuances. Rather, the granting of continuances is not favored and the party seeking a continuance must make a proper showing of good cause." (*Foster v. Civil Service Com., supra*, 142 Cal.App.3d at p. 448.)

There was no abuse of discretion here. As discussed, *ante*, the petition hearing had already been continued twice. Moreover, Juneau failed to submit any pleadings or evidence in support of the petition. The court had before it at the time of the hearing Juneau's petition, the Department's response, and the written administrative record. On this record, the court did not err in refusing a third continuance. (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1129 [trial court did not abuse its discretion in ruling on summary judgment motion where counsel failed to file opposition and did not appear to argue the motion].)

Juneau relies on section 575.2 in arguing the court erred in not granting him a continuance. However, that section proscribes sanctions against innocent parties whose counsel violate local rules of court. (§ 575.2, subd. (b); *Cooks v. Superior Court* (1990) 224 Cal.App.3d 723, 727.) Here, the court did not dismiss the petition or otherwise sanction Juneau. Rather, after reviewing the administrative record and hearing Juneau's arguments, the court ruled on the merits of Juneau's claims.

The court did not abuse its discretion in denying Juneau's request for a continuance.

III. *ADEQUACY OF RECORD*

Juneau asserts the court erred because it ruled on his petition "knowing or having reason to know that no evidence was presented[] that established the faulty administrative proceeedings . . . ." This contention is unavailing.

A. *Standard of Review*

Section 1094.5 specifies the scope of the trial court's review of administrative agency actions. The trial court's inquiry extends to the question of whether there was any prejudicial abuse of discretion by the administrative agency. (§ 1094.5, subd. (b).) An abuse of discretion is established if the agency "has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Ibid*.) If the trial court applied the substantial evidence test, the appellate court's function is identical to that of the trial court: it will review the administrative record to determine whether the agency's findings were supported by substantial evidence. (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 217-220.) In making its determination, the appellate court examines all relevant evidence in the administrative record, viewing it in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment. (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225.) The burden is on the appellant to prove there was an abuse of discretion through the issuance of a decision that was unsupported by substantial evidence. (*Ibid*.)

B. *Analysis*

Section 1094.5, subdivision (a) authorizes the parties to offer in evidence "all or any part of the record" of the proceedings, but in practice, the entire administrative record is generally offered. The petitioner has the burden of producing a sufficient administrative record to demonstrate there was error by the agency. He must in all cases take the steps required to request and pay for the inclusion of the transcript of the administrative hearing in the record. (See *Lees v. Bay Area Air Pollution Control Dist.* (1965) 238 Cal.App.2d 850, 854.) Without producing a copy of the administrative hearing transcript, a petitioner cannot usually rebut the presumption that the agency performed its official duty, and that presumption will prevail. (*Ward v. Riverside County* (1969) 273 Cal.App.2d 353, 358.)

A tape recording of the administrative proceedings may provide an adequate means to review those proceedings. (*Darley v. Ward* (1980) 28 Cal.3d 257, 261.) However, this does not mean the court is compelled to accept the tape recordings in that form. (*Ibid*.) A court may require written transcriptions where it is necessary to facilitate review. (*Ibid*.)

Here, as indicated, *ante*, the court had the written transcription of the administrative record before it when it ruled on Juneau's petition. If Juneau wanted to present any further evidence, it was his burden to produce it. As the court in *Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354 explained, "[e]ven though section 1094.5, subdivision (a) allows both parties in a mandamus proceeding to file either 'all or part' of the record of the administrative proceeding for review by the court, this does not mean

respondent is *required* to file the administrative record or that petitioner is *relieved* from the burden of providing a sufficient enough record to establish error." It remains "the responsibility of the petitioner to produce a sufficient record of the administrative proceedings; ' . . . otherwise the presumption of regularity will prevail, since the burden falls on the petitioner attacking the administrative decision to demonstrate to the trial court where the administrative proceedings were unfair, were in excess of jurisdiction, or showed "'prejudicial abuse of discretion.'" [Citations.]'" (*Elizabeth D. v. Zolin*, *supra*, at p. 354.)

Thus, the court did not err in ruling based upon the written administrative record before it. If there was additional evidence Juneau felt was necessary to prove his claims, the presumption of regularity prevails because he failed to produce such evidence.

IV. *JUNEAU'S CLAIMS ABOUT A "FLAWED" ADMINISTRATIVE PROCESS*

A great deal of Juneau's brief is devoted to his argument the Department's administrative process of declaring a dog a nuisance was "flawed" and unconstitutional.

However, as the appellant it is Juneau's burden to provide an adequate record and cite to "facts in the record that support the claim of error." (*In re S.C* (2006) 138 Cal.App.4th 396, 408; *Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 849.) Juneau has not included the administrative record as part of the record on appeal and cites to no facts in the record to support his claims of error. The only citation to the record is to the reporter's transcript of the hearing on his petition. Thus, his claims the administrative process is flawed and unconstitutionalcannot be reviewed on this appeal.

Moreover, Juneau provides no legal analysis to support his claims the process was flawed or unconstitutional. He claims the process violated his constitutional rights and requests that the governing ordinance and review process "be declared unconstitutional on its face and as applied, and that the [Department] be required to institute proper rules of evidence, legal procedures and to provide a legal transcript of any and all hearings to be made by a qualified court reporter . . . ." However, Juneau does not cite to any ordinance or identify the evidentiary rules he is challenging, and does not identify any law requiring a court reporter at administrative proceedings. Without citation to authority supporting his position, we cannot review this issue. (*In re S.C., supra*, 138 Cal.App.4th at p. 408.)

Although Juneau has appealed in propria persona, he is not relieved of his duty to comply with appellate procedures. (*People v. Neilson* (2007) 154 Cal.App.4th 1529, 1534.) In the absence of citations to the record and applicable authority, the presumption the trial court's decision was correct must prevail. (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.